

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of Fujimoto	Confirmation No. 4648
Serial No. 10/632,862	Group Art Unit 3627
Filed August 4, 2003	Examiner Haider
For: <b><i>FIXED AMOUNT SALES SYSTEM</i></b>	

Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF AND  
RESUBMISSION OF  
APPELLANTS' BRIEF UNDER 37 C.F.R. §41.37

Sir:

The notice of non-compliant appeal brief mailed April 8, 2009 indicates that the brief did not contain a concise statement of the status of all claims. This submission corrects the deficiency.

This brief is in furtherance of the Notice of Appeal, filed in this case on December 5, 2008. Should an extension of time required to gain entry of the Appeal Brief, a provisional petition therefore is hereby made. The Commissioner is authorized to charge Attorney's Deposit Account 50-2041 (Whitham, Curtis, Christofferson & Cook) for any fee required to gain entry and consideration of this Appeal Brief.

## TABLE OF CONTENTS

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. §41.37(c)):

I. REAL PARTY IN INTEREST

II. RELATED APPEALS AND INTERFERENCES

III. STATUS OF CLAIMS

IV. STATUS OF AMENDMENTS

V. SUMMARY OF CLAIMED SUBJECT MATTER

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

VII. ARGUMENTS

☐ ARGUMENT VIIA. REJECTIONS UNDER 35 U.S.C. §112, FIRST  
PARAGRAPH

☐ ARGUMENT VIIB. REJECTIONS UNDER 35 U.S.C. §112, SECOND  
PARAGRAPH

☐ ARGUMENT VIIC. REJECTIONS UNDER 35 U.S.C. §102

☒ ARGUMENT VIID. REJECTIONS UNDER 35 U.S.C. §103

☐ ARGUMENT VIIE. REJECTION OTHER THAN 35 U.S.C. §§102, 103  
AND 112

VIII. CLAIMS APPENDIX

IX. EVIDENCE APPENDIX

X. RELATED PROCEEDINGS APPENDIX

I. REAL PARTY IN INTEREST

The real party in interest in the appeal is:

- ☐ the party named in the caption of this brief.
- ☒ the following party: NEC Corporation of Tokyo, JAPAN

## II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals, interferences or judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal:

☒ there are no related appeals, interferences or judicial proceedings related to, which directly affect or may be directly affected by or have a bearing on the Board's decision in this pending Appeal.

☐ these are as follows:

### III. STATUS OF CLAIMS

The status of the claims in this application are as follows:

#### A. Total number of claims in Application

Claims in the application are: Claims 1, 5, 6, and 9, totaling four (4) total claims.

#### B. Status of all the claims:

1. Claims cancelled: 2 to 4, 7 and 8
2. Claims withdrawn from consideration but not cancelled: none
3. Claims pending: Claims 1, 5, 6, and 9
4. Claims allowed: none
5. Claims rejected: Claims 1, 5, 6, and 9

#### C. Claims on Appeal.

The claims on appeal are: Claims 1, 5, 6, and 9

IV. STATUS OF AMENDMENTS

The status of amendments filed subsequent to the final rejection are as follows:

No amendments were made to the case after entry of the final rejection on September 12, 2008.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention is directed to a fixed amount sales system associated with a gasoline stand. As shown in Figure 2 of the application, the user enters a precise amount of money he or she is going to spend; the user then gets a display which shows items (e.g., food, soda, cigarettes, etc.) which he or she might purchase that are less than the specified amount of money; the purchaser may then choose (or not choose) to purchase one or more items; and then the purchaser fills his or her tank with gasoline up to the precise amount specified or up to the precise amount specified less the cost of the items chosen (if any). In short, the purchaser gets gas, and optionally items he or she chooses, and does not get any change or anything that would be a substitute for change such as a credit to be applied to future sales.

The operator of the gas pump does not need a memory card or other device, and does not need to be in any way registered with the filling station. All he needs is money. With reference to panel B and block S2 of Figure 2, a fixed amount of money is selected (see paragraph bridging pages 4 and 5 of the application). After an amount of money is selected, the customer can choose to select optional items to be purchased in addition to gasoline (see panel C and block S3 in Figure 2). A number of option items, all of which cost less than the fixed amount, are then displayed. See, for example, panel E of Figure 2 where different juices, cigarettes, gum, and cake are displayed). Selection of optional items, if desired, are made, and a balance amount is provided which is the difference between the fixed amount and the selected items. As an example, panel E on Figure 2 show that upon purchasing juice and tobacco, the customer will be entitled to a specific amount of regular gasoline (1620) that is less than the fixed amount (2000). The paragraph bridging pages 5 and 6 describe the balance corresponding to the difference of the option item amount from the fixed amount. As shown in Figure 2 and block S7 and as described on page 6, line 2, fuel is then pumped into the vehicle in amount equal to the balance amount. Figure 2 also shows that the purchaser can be provided with a bar coded ticket to pick up his optional items he purchased.

In operation, if a customer puts \$20 into a gasoline pump, and chooses to buy a \$1 candy bar, he gets \$19 of gas and a \$1 candy bar. The customer does not need a memory stick or other device. Rather, all he needs is the \$20 (or any other fixed amount). The invention provides a very convenient mechanism for a customer to purchase fuel, and any other times he wants, without having to worry about handling change and without having to have a memory device or other mechanism for tracking purchases.

A concise explanation of independent claim 1 is presented in the following table which identifies portions of the application (e.g., Figures and numeric identifiers; page and line numbers) pertaining to the claimed subject matter (it being understood that these are not the only portions of the application which describe features of the claimed invention).

1. A fixed amount sales system associated with a gasoline stand, comprising:	Figure 1 shows a POS terminal. As explained on page 4, lines 1-2, the external unit 30 is gasoline feeder (pump).
a point of sales (POS) terminal;	Figure 1 shows external unit 30, which is a gas pump.
a display associated with the POS terminal;	See display in upper left corner of external unit 30 depicted in Figure 1
wherein said display displays a plurality of fixed amount selections for fuel,	Figure 2 shows in panels B and C a plurality of fixed amount selections (e.g., 1000 yen, 2000 yen, 3000 yen)
wherein said POS terminal is used to select one fixed amount selection from said plurality of fixed amount selections for fuel,	Block S2 of Figure 2 shows the selection of 2000 yen (for exemplary purposes). The paragraph on page 4, line 21 discusses selection of one fixed amount displayed on the display.



<p>wherein said display, after selection of said one fixed amount selection is made with said POS terminal, selectively displays one or more option items to be purchased, each option item being associated with an option item amount, each option item displayed having an option item amount which is less than said one fixed amount selection made with said POS terminal, and upon selection of one or more option items displays as a balance amount</p>	<p>Panel C on Figure 2 shows selection of an “option” button after a fixed amount has been specified. If the “option” button is selected (as is the case in block S3 of Figure 2), the customer is provided with a display of a plurality of items (e.g., Panel D in Figure 2 shows juices, tobacco, cakes, and gum). The customer can select as many items as desired, so long as the total amount for the option items is less than the fixed amount (see block S6 in Figure 2). Page 5, lines 21 et seq. indicates that after selections of option items are made the “settlement” button (panel D of Figure 2) is selected.</p>
<p>a difference between said one fixed amount selection any option item amounts for option items to be purchased, and</p>	<p>Panel E of Figure 2 shows the fixed amount (2000), the option items (juice and tobacco with their associated prices) and the balance amount (the amount for regular gas 1620)</p>
<p>wherein said POS terminal permits fueling at said gasoline stand in an amount equal to said balance amount.</p>	<p>Page 6, line 2, and Figure 2 at block S7 shows that the customer is able to pump the balance amount in fuel into his vehicle. Figure 2 shows the option items might be retrieved using a bar coded ticket</p>

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection to be reviewed on appeal is the rejection of claims 1, 5, 6 and 9 as obvious under 35 U.S.C. 103(a) over U.S. Patent Publication 2001/0020198 to Wilson in view of Japanese Patent 10-324398 to Kazumi.

ARGUMENT VIIA. REJECTIONS UNDER 35 U.S.C. §112, FIRST PARAGRAPH

There are no rejections under 35 U.S.C. §112, first paragraph.

ARGUMENT VIIB. REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH  
There are no rejections under 35 U.S.C. §112, second paragraph.

Docket 02530027aa  
S.N. 10/632,862

13

ARGUMENT VIIC. REJECTIONS UNDER 35 U.S.C. §102

There are no rejections under 35 U.S.C. §102.

Argument VIID. REJECTIONS UNDER 35 U.S.C. §103

Claims 1, 5, 6, and 9 were rejected as being obvious over U.S. Patent Publication 2001/0020198 to Wilson in view of Japanese Patent 10-324398 to Kazumi.

Claim 1 specifies:

1. A fixed amount sales system associated with a gasoline stand, comprising:

a point of sales (POS) terminal;

a display associated with the POS terminal;

wherein said display displays a plurality of fixed amount selections for fuel, wherein said POS terminal is used to select one fixed amount selection from said plurality of fixed amount selections for fuel,

wherein said display, after selection of said one fixed amount selection is made with said POS terminal, selectively displays one or more option items to be purchased, each option item being associated with an option item amount, each option item displayed having an option item amount which is less than said one fixed amount selection made with said POS terminal, and upon selection of one or more option items displays as a balance amount

a difference between said one fixed amount selection and any option item amounts for option items to be purchased, and

wherein said POS terminal permits fueling at said gasoline stand in an amount equal to said balance amount. (Emphasis added)

No combination of references show the ability to use money (not a credit card or other transaction storing device) to obtain both gas and optional items, with no money back.

Both Wilson and Kazumi show tracking and handling change. This invention completely avoids tracking and handling change. Further, both Wilson and Kazumi require the use of devices in place of or in addition to money. With the present invention, only money is required.

As noted in the amendment filed June 5, 2008 at pages 5-6, U.S. Patent Publication to Wilson shows the use of a prepaid transponder. Wilson provides a

system where a cash customer adds value to a transponder. The customer pumps gas and/or buys optional items. Once his tank is full or he or she stops pumping, the amount of money remaining is credited to the transponder so that it can be used at some point in the future. Wilson describes the use of transponder systems (hand held or vehicle mounted (see paragraph [0127]) which allow the transmission of information from a customer to a controller. This information may be used to control the types of purchases being made, etc. Further, Wilson provides a way to use the transponder in conjunction with cash payments--Paragraph [0121] indicates that the user is notified when the transponder has a preset value (ie, when it has zero dollars)—The customer can then add value to the transponder using a credit card or cash (see paragraph [0122]). While the Wilson system allows the user to buy more than just gasoline, the Wilson system suffers from the requirement that the user must carry a transponder on his person or vehicle. And the transponder provides information flow both to and from the user—e.g., who is making the purchase, what he is purchasing, and where it is being purchased—such information flow may not be desirable.

In the office action dated March 19, 2008, the Examiner admits “Wilson fails to disclose a difference” (page 4, line 1)—meaning that Wilson does not show the difference between a fixed dollar amount specified, and the option items a person wishes to buy. However, the Examiner’s admission understates the differences between the claimed invention and Wilson. As noted in detail above, Wilson does not show a fixed amount sales system where money is used. Rather, Wilson uses a computerized transponder system. Further, Wilson does not show a system where no money is returned. Rather, in Wilson, the transponder is used to track purchases and to store dollar values that can be used at a later time.

The Examiner has looked to Kazumi as making up for the “difference” parameter in the claims. This reliance on Kazumi is misplaced. As noted in the amendment filed June 5, 2008, at page 6, JP 10-324398 to Kazumi requires the customer to have a memory device. See paragraph [0006] of the computerized translation of Kazumi which references values being added to the storage section of a

memory device. In Kazumi, the customer goes to a filling station and, for example, puts in \$20. If his car needs only \$19 worth of fuel to be full, the pump stops automatically and the extra \$1 is credited onto the memory device (see Abstract-“the saved amount of money of this customer is updated to be the difference between the sold [mount] of money for gasoline actually refueled and the total of the saved amount of money of this customer and the amount of money specified by this customer”). Presumably, the saved amount can be used at a later time. In short, Kazumi provides a system where the customer can use cash in fixed amounts, and can perform fueling “without causing damage to a gas station” (see abstract). See also paragraphs [0006] and [0008] of the computerized translation where it is explained that the customer does not need to receive change at the time the purchase is made as this is memorized in a storage section cumulatively. Thus, Kazumi does not contemplate purchasing of gas plus other items to a fixed amount. Rather, Kazumi describes purchases for a fixed amount, that, in situations where the fixed amount is too much (i.e., the car’s tank would overflow and cause damage to the filling station), the money difference is stored on a memory device.

No combination of Wilson and Kazumi would make the claimed invention obvious, as both Wilson and Kazumi describe systems which require a transponder or memory device. These are wholly different systems than the claimed invention, which does not utilize a transponder. The invention allows anybody to use a fixed amount of cash to pay for gas and other items. There is no requirement for a transponder or memory device (e.g., no registration, no providing of information about a customer, no requirement on the customer to keep track of a device which communicates and/or holds information). The invention allows the selections of optional items available to a customer to vary depending on the fixed amount he or she has provided. In short, the invention provides a simplified system which does not require the customer to carry a device and does not require the customer to precisely track the amount of gas or the amount of purchases he is making (as this is done automatically).

As noted above, no combination of references show the ability to use money



Docket 02530027aa  
S.N. 10/632,862

17

(not a credit card or other transaction storing device) to obtain both gas and optional items, with no money back.

In view of the above, the position taken by the Examiner should be reversed.

ARGUMENT VIIIE. REJECTION OTHER THAN 35 U.S.C. §§102, 103 AND 112

There are no rejections other than the rejection under 35 U.S.C. §103(a), discussed above.

VIII. CLAIMS APPENDIX

The text of the claims involved in the appeal are:

1. A fixed amount sales system associated with a gasoline stand, comprising:
  - a point of sales (POS) terminal;
  - a display associated with the POS terminal;
  - wherein said display displays a plurality of fixed amount selections for fuel,
  - wherein said POS terminal is used to select one fixed amount selection from said plurality of fixed amount selections for fuel,
  - wherein said display, after selection of said one fixed amount selection is made with said POS terminal, selectively displays one or more option items to be purchased, each option item being associated with an option item amount, each option item displayed having an option item amount which is less than said one fixed amount selection made with said POS terminal, and upon selection of one or more option items displays as a balance amount
    - a difference between said one fixed amount selection and any option item amounts for option items to be purchased, and
    - wherein said POS terminal permits fueling at said gasoline stand in an amount equal to said balance amount.
5. The fixed amount sales system according to claim 1, wherein the POS terminal issues an option item ticket for said option items purchased and a sales receipt.
6. The fixed amount sales system according to claim 5, wherein said option item ticket includes a bar code.
9. A fixed amount sales method of claim 1, wherein the POS terminal outputs a receipt for the sales as well as a coupon for option items chosen by a customer.

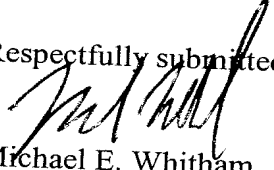
IX. EVIDENCE APPENDIX

There is no additional evidence on which Applicants rely in this Appeal.

X. RELATED PROCEEDINGS APPENDIX

There are no related proceedings involving this application.

Respectfully submitted,



Michael E. Whitham  
Reg. No. 32,635

Whitham, Curtis, Christofferson & Cook, P.C.  
11491 Sunset Hills Road, Suite 340  
Reston, VA 20190

Tel. (703) 787-9400  
Fax. (703) 787-7557

Customer No. 30743